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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAYMOND DAVID KILDUFF,

Plaintiff(s),

v.

MGM RESORTS INTERNATIONAL
d/b/a ARIA,

Defendant(s).

2:13-CV-305 JCM (PAL)

ORDER

Presently before the court is defendant MGM Resorts International's motion to dismiss. (Doc. # 19). Plaintiff has not filed a response, even though the deadline date for filing a response has passed.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

Pursuant to Local Rule 7-2(d), an opposing party's failure to file a timely response to any motion constitutes the party's consent to the granting of the motion and is proper grounds for

1 dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the
2 district court is required to weigh several factors: “(1) the public's interest in expeditious resolution
3 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)
4 the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic
5 sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d
6 1421, 1423 (9th Cir. 1986)).

7 In light of the plaintiff's failure to respond and weighing the factors identified in *Ghazali*,
8 the court finds dismissal appropriate.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant MGM Resorts
11 International's motion to dismiss (doc. # 19) be, and the same hereby, is GRANTED.

12 IT IS FURTHER ORDERED that the complaint is dismissed without prejudice. The clerk
13 of the court shall enter judgment and close the case.

14 DATED April 30, 2013.

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17 **UNITED STATES DISTRICT JUDGE**